

**Notice of Allowability**

Application No.

10/626,406

Examiner

Andrew B. Freistein

Applicant(s)

LIPPA ET AL.

Art Unit

1626

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/22/2005.
2. ☒ The allowed claim(s) is/are 1-18.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 01/18/2005
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 09082005
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

JSB

### **DETAILED ACTION**

Claims 1-30 are currently pending in the instant application.

#### ***Priority***

This application claims benefit of US Provisional Application No. 60/398,386, filed 07/25/2002.

#### ***Information Disclosure Statement***

Applicant's information disclosure statement (IDS), filed on January 18, 2005, has been considered. Please refer to Applicant's copies of the 1449 submitted herewith.

#### ***Restriction Requirement***

Applicant's election of Group I, Claims 1-18, and the compound 3-[1-(4-chloro-phenyl)-propylsulfanyl]-5-(pyridine-3-ylamino)-isothiazole-4-carboxylic acid amide, in the reply filed on August 22, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

As a result of the election and the corresponding scope of the invention identified as Group I, Groups II and III, Claims 19-30, were withdrawn from further consideration as being non-elected subject matter materially different in structure and composition and have been restricted properly.

During a telephone interview on September 12, 2005 Attorney David Kershner agreed to cancel the non-elected subject matter, Claims 19-30. However, the election

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restriction is maintained and applicant has the right to file a divisional application to the cancelled claims.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

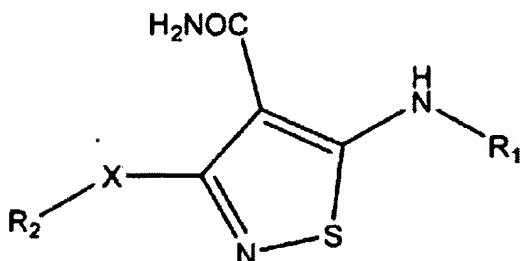
Authorization for this examiner's amendment was given during a telephone interview with Attorney David Kershner on September 12, 2005.

This application has been amended as follows:

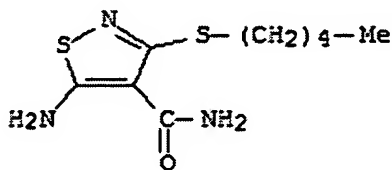
1. Amend the first paragraph of the Specification by inserting the following sentence after title, "Isothiazole Derivatives Useful As Anticancer Agents," and before the "Background Of The Invention": "This application claims benefit of U.S. Provisional Application Number 60/398,386, filed July 25, 2002."
2. Cancel Claims 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30.

### ***Reasons For Allowance***

The present invention is compounds of Formula (I),



The closest prior art is Larson et al., US Pat. No. 6,235,764, disclosing



compound, . The instant application differs from the prior art in that R<sup>1</sup> of the instant application is a 4-10 membered heterocyclic aromatic ring. On the other hand, the prior art discloses a compound wherein this portion of the compound is H.

Additionally, Applicant agreed to cancel the withdrawn subject matter.

### ***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew B. Freistein whose telephone number is (571) 272-8515. The examiner can normally be reached Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph McKane can be reached on (571) 272-0699. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

KAMAL A. SAEED, PH.D.  
PRIMARY EXAMINER

Andrew B. Freistein  
Patent Examiner, AU 1626

for Kamal Saeed  
Joseph K. McKane  
Supervisory Patent Examiner, AU 1626  
Date: September 13, 2005